

**Commonwealth of Massachusetts
Executive Office of Health and Human Services**

NOTICE OF PUBLIC HEARING

Pursuant to the authority of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, three remote public hearings will be held on Friday, May 7, 2021, at the times specified below relative to the adoption of amendments to the following regulations. These actions are being taken pursuant to the requirements of M.G.L. c. 118E, §§ 13C and 13D.

The Executive Office of Health and Human Services (EOHHS) is making these changes, subject to federal approval, to ensure that payments are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities and providers, to ensure that payment rates are consistent with efficiency, economy, and quality of care.

1. 10:00 a.m.: 101 CMR 323.00: Rates of Payment for Hearing Services

101 CMR 323.00 governs the rates of payment used by state governmental units, including MassHealth, for hearing services provided by eligible providers.

EOHHS is making changes to (1) increase rates for certain hearing services covered under 101 CMR 323.00 by an administrative adjustment of 9.66%; (2) incorporate certain cochlear implant device related services and increase these rates by an administrative adjustment of 9.66%; and (3) establish service-specific codes and rates for bone-anchored hearing aid (BAHA) services. Payment rates for other services set forth in 101 CMR 323.00 will remain at their current levels. EOHHS is also incorporating procedure code updates added by administrative bulletin following the last adoption of regulation amendments.

It is estimated that the aggregate annual MassHealth expenditures will increase by \$500K.

The proposed amended regulation for hearing services contains rates effective for dates of service on or after June 1, 2021. There is no fiscal impact on cities and towns. The amendments are not anticipated to impose new costs on small businesses, and any impact on small business providers will vary based on the volume of services provided.

2. 11:00 a.m.: 101 CMR 337.00: Chronic Maintenance Dialysis Treatments and Home Dialysis Supplies

101 CMR 337.00 governs the rates of payment used by state governmental units, including MassHealth, for renal dialysis services rendered by eligible providers.

101 CMR 337.00 provides an all-inclusive (bundled) rate that covers the dialysis services and supplies—specifically, the dialysis procedure and certain prescribed dialysis drugs. The proposed amendment adds a retrospective cost adjustment factor (CAF) of 5% to the portion of the bundled rate for dialysis procedures only, resulting in the proposed bundled rate of \$185.18.

It is estimated that the aggregate annual MassHealth expenditures will increase by \$532K. There is no fiscal impact on cities and towns. The amendments are not anticipated to impose new costs on small businesses, and any impact on small business providers will vary based on the volume of services provided.

The proposed amended regulation for dialysis services contains rates effective for dates of service on or after June 1, 2021.

3. 1:00 p.m.: 101 CMR 316.00: Surgery and Anesthesia, 101 CMR 317.00: Medicine, and 101 CMR 318.00: Radiology

101 CMR 316.00, 317.00, and 318.00 (collectively referred to as “physician pricing regulations”) govern the rates of payment used by governmental units for surgery and anesthesia care; office visits and other general medicine; and radiology services rendered to publicly aided individuals by eligible providers, including physicians and eligible midlevel practitioners. These proposed amendments contain updates to rates, coverage, and codes, and a technical correction for physician services as described in detail below.

A. Rate Updates

1. General Physician Services. Using the historical rate methodology for physician services, the proposed amendments develop rates for the majority of the codes in the physician pricing regulations based on the Medicare resource-based relative value system (RBRVS). Based on this methodology, rates are calculated by applying a standard dollar value, defined as a conversion factor (CF), to Medicare-assigned relative value units (RVUs) to derive a rate for each procedure code. For the proposed regulations, January 2020 Medicare RVUs are used to calculate the MassHealth-specific CFs.

Four conversion factors are calculated for use in the RVU-based rate development: General CF, Policy Group 1 CF, Policy Group 2 CF, and the Anesthesia CF. The General CF is used for calculating rates for the majority of physician services. The Policy Group 1 CF applies to certain maternal, newborn, and family planning services; screening mammography; colonoscopy screening; and tobacco cessation services. The Policy Group 2 CF applies to global obstetrical delivery services. The Anesthesia CF, with two subparts, is used for calculating rates for anesthesia services

For the proposed regulations, budget-neutral conversion factors were calculated for the General, Policy Group 1, and Policy Group 2 CFs, which are then used to calculate

individual rates. Individual rates calculated based on the 2020 Medicare RVUs and the revised CFs increase or decrease compared to their respective current rates depending on how Medicare RVUs change. For anesthesia services, the per base unit fee and per one-minute time unit fee will remain at their current levels.

2. Rates for Policy Groups, EPSDT, and Office Visit Services. For certain policy group, Early and Periodic Screening, Diagnostic, and Treatment (EPSDT), and office visit services with rates that would decrease relative to the current rates, EOHHS proposes to maintain rates at current levels.

3. Technical Component Rates for MRI and MRA Services. The technical component (TC) rates for the specified MRI/MRA services are updated using the current rate methodology for setting rates for these services, but using applicable rates obtained from the 2020 Medicare Physician Fee Schedule (PFS) and, if applicable, the 2020 Medicare Hospital Outpatient Prospective Payment System (OPPS) Fee Schedule.

4. Fluoride Treatment Service. The rate for application of topical fluoride varnish service (code 99188) is proposed to be changed from individual consideration (I.C.) to \$26.00, which is the current rate for the same service (code D1206) established in 101 CMR 314.00: *Dental Services*. This proposed rate change for 99188 is being made to ensure consistency of MassHealth rates for the same service covered under different programs.

5. Rates for Facial Feminization Services. The rates for certain surgery codes when billed as part of facial feminization surgery to treat gender dysphoria are proposed to be established by using the 2020 Medicare CF of \$38.0896, instead of the MassHealth-specific general CF. These codes include 14301, 14302, 20912, 21120, 21123, 21137, 21139, 21208, 21209, 21210, 21296, 30410, 30420, 30465, 31750, 64716, and 64771. This rate increase is to reflect the complexity and increased clinical and technical skill required to perform these craniofacial procedures as part of facial feminization surgery to treat gender dysphoria.

B. Other Updates

1. Addition of Acupuncturists as Eligible Providers. The proposed amendments add acupuncturists as independent eligible providers to the Medicine regulation. This change is being made in anticipation of forthcoming changes to the MassHealth Physician program regulation, allowing acupuncturists to bill MassHealth for acupuncture services rendered to MassHealth members.

2. Behavioral Health and Developmental Screening Services. To prepare for required reporting to the Centers for Medicare and Medicaid Services (CMS) on the core set of quality measures for children enrolled in MassHealth, the proposed amendments make changes to distinguish between developmental screening and behavioral health screening services. Currently, developmental screening and

behavioral screening use the same code (96110) with eight modifiers. The proposed changes would specify that developmental screening would use code 96110, and behavioral health screening would use code 96127. In addition, the proposed amendments would simplify the coding system to include only two modifiers for each code, denoting a positive or negative screen (U1 for negative; U2 for positive).

C. Coding Updates. The proposed amendments incorporate coding updates related to the physician pricing regulations that were previously issued via Administrative Bulletins 19-04, 19-17, and 20-38. EOHHS anticipates incorporating the annual Current Procedural Terminology (CPT) / Healthcare Common Procedure Coding System (HCPCS) coding changes issued via the calendar year 2021 Physician Fee Schedule into the proposed regulations as a post-public hearing change. In addition, relevant physician pricing regulations will be amended to reflect updated terminology and current policy.

D. Technical Correction. Lastly, the proposed amendments update the description for modifier SL under 101 CMR 317.04(3)(r). The description erroneously added codes 90472 and 90474 as applicable codes for usage with modifier SL. This amendment clarifies that these two codes cannot be billed with modifier SL.

It is estimated that annual aggregate MassHealth expenditures will increase by \$402,000 as a result of the proposed amendments to the physician pricing regulations. There is no fiscal impact on cities and towns. The amendments are not anticipated to impose new costs on small businesses, and any impact on small business providers will vary based on the volume of services provided.

The proposed amended physician pricing regulations contain rates effective for dates of service on or after August 1, 2021.

If you would like to testify at any of the public hearings, please register online at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings. To join the hearing online, go to <https://statema.webex.com>, and enter meeting ID 644 151 469. To join the hearing by phone, call (866) 692-3580, and enter meeting ID 644 151 469# when prompted.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to ehs-regulations@state.ma.us as an attached Word or PDF document or as text within the body of the email with the name of the regulation in the subject line. All submissions must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6th Floor, Quincy, MA 02171. Written testimony must be submitted by 5:00 p.m. on Friday, May 7, 2021. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the current drafts of the proposed actions, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6th Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at ADAAccommodations@state.ma.us or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

EOHHS may adopt a revised version of the proposed actions taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings.

April 16, 2021